MOTION FILED
APR - 6 1994

No. 92-1920

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

KAREN LIVADAS,
Petitioner,

vs.

LLOYD W. AUBRY, JR.,
IN HIS OFFICIAL CAPACITY AS
LABOR COMMISSIONER FOR
THE STATE OF CALIFORNIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENT OUT OF TIME

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Amicus Curiae Food Employers Council, Inc., by its counsel, moves this Court for an Order Granting Leave to File

the *Amicus Curiae* Brief lodged with the Court on April 5, 1994, out of time.

The grounds for this Motion are as follows:

1. Counsel for *Amicus Curiae* made contact with Lawyers Brief Service in Los Angeles concerning printing and filing of the *Amicus Curiae* Brief on or about March 11, 1994, counsel specifying at the time that the printed brief needed to be filed with this Court by April 1, 1994, counsel having been advised by the California Labor Commissioner that Respondent's Brief was due on that date.

2. Counsel was advised by representative of Lawyers Brief Service that the amicus curiae brief could be printed and filed with this Court within three days of delivery of the typewritten brief to their offices in Los Angeles.

3. The typewritten brief was delivered to Lawyers Brief Service by counsel on March 24, 1994. The first proof copy of the printed brief was received on March 25, 1994. Counsel called in corrections to the proof copy on that same date. A second proof copy was received on March 28, 1994. Counsel made one small correction to the proof by telephone on that same date. Counsel was advised on that same date by a representative of Lawyers Brief Service that the forty printed copies of the brief would be timely filed. Lawyers Brief Service made service and placed filing copies in the U.S. Post Office on March 30, 1994 pursuant to Rule 29.2 and obtained a certificate of mailing from the post office.

4. On April 5, 1994 counsel was advised by telephone by the Clerk of this Court that the copies of the printed brief had just been received and could not be filed without an Order of the Court granting leave therefor. Counsel learned for the first time during this telephone conversation that the Court had issued a specific Order requiring receipt of all *amici* briefs in the Office of the Clerk by 3:00 p.m. on April 1, 1994. Counsel have never received a copy of this Order.

5. Counsel for this *amicus curiae* have done all in their power to ensure a timely filing of the printed brief. Leave is accordingly requested to file said brief out of time.

DATED: April 5, 1994

Respectfully Submitted,

Joseph M. McLaughlin

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Counsel of Record

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